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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,065	12/05/2003	Hugo Rodriguez	206,294	9141

7590 05/17/2005

Abelman, Frayne & Schwab  
150 East 42nd Street  
New York, NY 10017

EXAMINER
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STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/729,065	<b>Applicant(s)</b> RODRIGUEZ, HUGO	
	<b>Examiner</b> Anthony Stashick	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 9-11, 17-18 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin 5,339,543 in view of Buchsenschuss 5,664,342. Lin '543 discloses all the limitations substantially as claimed including the following: a sole 3; an insole 1; a heel 4 having a height greater than the thickness of the insole (see Figure 2); the heel being composed of a solid material (heel is shown as being solid except for the attachment holes, but rest of heel is solid); a strap (2 in Figure 1 where the reference numbers 21 are located) for removably securing at least the insole to the foot of a wearer; a fastener N for removably attaching a portion of the strap to the insole; the sole having a front portion and a rear portion (see Figure 1); the heel positioned over the rear portion of the sole (see Figure 1); the insole positioned upon the heel and the front portion of the sole (see Figures 1 and 3-4). Lin '543 does not disclose a cushion positioned on a rear portion of the insole above the heel. Buchsenschuss '342 teaches that a cushion 3 can be placed upon the heel portion of an insole to reduce impact on the heel when the foot is put down. Buchsenschuss '342 also teaches that the cushion extends along at least a portion of the peripheral edge of the insole (the peripheral edge being a margin of the insole inwards to the edge of the cushion). Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a cushion in the

heel portion of the insole of Lin '543, as taught by Buchsenschuss '342, to aid in cushioning the impact of the user's heel when the shoe strikes the ground.

3. Claims 5, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 9 and 17 above in view of Santisi 2,759,284. The references as applied to claims 1,9 and 17 above disclose all the limitations of the claims except for the material of the heel being plastic. Santisi '284 teaches that the heel of a sandal can be made of plastic to make it lighter in weight and to allow for it to be see-through for display purposes. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the heel of the references as applied to claims 1, 9 and 17 above out of plastic, as taught by Santisi '284, to make the heel and therefore the entire shoe lighter in weight.

4. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Evins Des. 217,217 (Evins '217). The references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the dimensions of the heel. Evins '217 teaches that the bottom portion of the heel can have a first predetermined width and the middle portion of the heel, positioned vertically above the bottom portion, can have a second predetermined width less than that of the first predetermined portion (see Figures 2 and 3). This allows for a better aesthetic appeal as well as allows for a lightening of the heel. Therefore, it would have been obvious to make the heel of the references as applied to claims 1 and 9 above with the middle portion smaller in width than the bottom portion of the heel to allow for the heel to be lighter while still aesthetically pleasing to the eye.

5. Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Wallach 2,470,200. The references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the aperture passing through the heel and extending from one lateral side to the other. Wallach '200 teaches that a heel can have an aperture 31 passing through the heel from one lateral side to the other to aid in holding cylinders such as lipstick (see col. 4, lines 65-73). Therefore, it would have been obvious to place an aperture, such as that taught by Wallach '200, in the heel of the references as applied to claims 1 and 9 above, to allow for a receptacle to hold cylinders such as lipstick, as taught by Wallach '200.

6. Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 9 above in view of Wasserman 4,697,362. The references as applied to claims 1 and 9 above disclose all the limitations of the claims except for the logo attached to a lateral side of the heel. Wasserman '362 teaches that a logo 3 can be removably attached to the heel area of a shoe in order to provide a visual display for ease of viewing by anyone within the proximity of the shown footwear. Therefore, it would have been obvious to place indicia, such as that taught by Wasserman '362, on the heel of the references as applied to claims 1 and 9 above, to provide easy viewing of the visual display by anyone within the proximity of the footwear, as taught by Wasserman '362.

7. Claims 4, 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 3, 11 and 18 above in view of Official Notice. The references as applied to claims 3, 11 and 18 above disclose all the limitations of the claims except for the fastener being hook and loop material. Official Notice is taken that

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hook and loop fasteners are an art accepted equivalent fastener for screws, nails, rivets, etc. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to use hook and loop fasteners in place of the removable screws N of Lin '543 to removably attach the strap to the insole while preventing bulging due to the fastener.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anthony Stashick

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Primary Examiner  
Art Unit 3728

ADS